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BENGAL GOVERNMENT RULES UNDER B. T. ACT.

The following notification appeared in the *Calcutta Gazette* of the 6th March 1929. Pt. I, p. 549 bringing the new rules under the Bengal Tenancy Act into force, the finally adopted rules appearing at pp. 549-592 of the said issue of the gazette:—

REVENUE DEPARTMENT.

Land Revenue.

NOTIFICATIONS*

No. 5462L.R.—The 26th March 1929.—In exercise of the powers conferred by sub-section (7) of section 39, and section 189 of the Bengal Tenancy Act, 1885 (VIII of 1885), the Governor in Council is pleased to make the following rules for all the districts of the Presidency of Bengal, to which the said Act applies, in supersession of all rules made by the Government of Bengal, under the aforesaid provisions of the said Act.

H. J. TWYNAM,

Secretary to the Government of Bengal (offg.).

RULES UNDER THE BENGAL TENANCY ACT, 1885

(VIII of 1885).

CHAPTER I.

General.

1. Except where otherwise provided for by law or by these rules, all proceedings and orders of Revenue Officers, passed in the discharge of any duty imposed upon them by or under the Bengal Tenancy Act, 1885 (hereinafter referred to in these rules as "the Act"), shall be subject to the supervision and control of the Local Government; and the proceedings and orders of each Revenue Officer under the Act shall be subject to the supervision and control of the Revenue Officers to whom he may be declared by the Local Government to be, for the purposes of the Act, subordinate.

Supervision and control by Local Government.
Act VIII of 1885.

The Collector and the Commissioner, in whose jurisdiction operations under these rules are in progress, shall be entitled to inform themselves of the nature and progress of such operations.

2. Where no other mode of service of notice is provided by the Act or by these rules, service shall be effected in the manner

Service of notice where mode not

* In accordance with the provisions of sec. 190 (1) of the Bengal Tenancy Act, the draft of these rules was published by notification No. 3427 L. R. of 21-2-1929 in the *Calcutta Gazette* of the 21st February, 1929, Pt. I, pp. 315-357, inviting objections or suggestions which any person might desire to make with respect to the proposed rules. Such suggestions were to be submitted to the Government of Bengal in the Revenue Department before the 23rd March, 1929 on or after which date the draft rules have been taken into consideration and finally passed by the Governor-in-Council. Alterations made and errors corrected have been indicated in Notes under the Rules

prescribed by the Act or these rules.

provided for the service of summons on a defendant under the Code of Civil Procedure, 1908, if the notice is addressed to one or more persons occupying or owing the same holding or tenure; and if it is addressed to a number of persons occupying or owning different holdings or tenures in the same village, the notice shall be served in the manner provided for the service of summons on a defendant under the Code of Civil Procedure, 1908, or by proclamation and beat of drum, and by posting it, in the presence of not less than two persons, on some conspicuous place in the village, and also by fixing it up in the village office, if any, where the rent is usually paid. In the case of uninhabited villages, the posting of the notice shall be made in the nearest inhabited village.

Provided that where the person to be served is a minor notice shall be served on the minor and also either on his or her legal guardian or on his or her guardian *ad-litem* appointed by the Court for purposes of service on an application by the person asking for service of notice.

Note.—The proviso is new and did not occur in the draft rules also.

Note.—This rule has undergone some changes since the rules were promulgated under the Act. Before 1900 if the notice was addressed to a number of persons occupying or owning different holdings in the same village, the manner of service was by proclamation and beat of drum, and by posting it in the presence of not less than two persons, on some conspicuous place in the village, and also by fixing it up in the village office, if any, where the rent is usually paid. By notification no. 113 L. R., dated the 8th January, 1900 published in *Calcutta Gazette* of January 10, 1900, Pt. I, p. 20, the words "in the manner prescribed for the service of summons on a defendant under the Code of Civil Procedure or" were added.

In the case of *Madhab Ram v. Dayal Chunder Ghose*, 2 C.W.N. 108, it was held that rule 3, chapter 1 of the rules made by the Local Government under cl. (2) of sec. 189 of the B. T. Act is intended to apply only to those cases where the Act speaks of the service of a notice; it may apply to cases where the Act speaks of the giving of notice, if such notice is required to be given in the prescribed manner.

In the case of *Taradas Malakar v. Ram Dayal Malakar*, 2 C.W.N. 125, it was held that where a notice to quit under sec. 49 of the B. T. Act was sent by post in a registered cover and it was found that the notice was delivered to the defendant, it was held that the notice had not been properly served, the mode of service being as described in the rules under the Act.

In *Tamasha Bibi v. Mathuranath Bhowmik*, 6 C.W.N. 67, it was held, strictly following the rules as they existed then, that a notice to quit addressed to several tenants must be served by proclamation and beat of drums as provided by rule 3 ch. 1 of the rules made by the Government under the Act. Personal service can only be effected when the notice is directed to a single tenant.

In *Lala Makhani Lal v. Lala Kuldip Narain*, 27 Cal. 774, the plaintiffs served a notice, by post, upon the defendant to quit certain *khudkhast* lands that were alleged to be in his wrongful possession and subsequently instituted a suit to eject him from those lands. It was held, following 2 C.W.N. 125, that the notice was bad in law as not having been in accordance with rule 3, ch. 1 and the suit of ejectment based upon such a notice must fail.

CHAPTER II.

Staple Food-crops and Price-lists.

Local areas.

3. *Section 39.*—Each sub-division of a district shall form a local area for the purposes of sub-section (1) of section 39 of the Act, and the Collector shall settle the mart within the sub-division at which prices shall be recorded.

4. Rice has been declared, and until further orders shall be deemed, to be the staple food-crop in all such local areas. Staple food-crops.

5. Price-lists of the staple food-crop shall be prepared on one market-day in the month, at intervals of not less than twenty days. Dates for preparation of price-list.
This market-day shall be selected by the Collector, subject to the control of the Board of Revenue.

6. The price recorded shall be the prevailing retail price at which the staple food-crop was actually sold in the mart to which the price-list refers on the day selected under rule 5. Method of determining prices.

7. (1) Price-lists shall ordinarily be prepared by a gazetted officer not below the rank of a Sub-Deputy Collector. But in special cases, where a Sub-Deputy Collector is not available, the Collector may authorise a kanungo to prepare the lists. Price-lists by whom to be prepared.

(2) Where prices are recorded at marts, other than those at the headquarters of districts, the Collector may, with the sanction of the Commissioner, authorise a Sub-Registrar to prepare the list, on days when no gazetted officer or kanungo is available.

(3) One or two respectable inhabitants of the locality shall always be asked to assist in the preparation of price-lists, and the list shall be signed by at least one of them, as well as by the officer preparing it.

8. Every officer charged with the preparation of price-lists shall keep a record showing, as far as practicable— Record to be kept by officer preparing price-lists.

(a) the date of his visit to the mart at which prices are to be recorded ;

(b) the names of vendors and purchasers, the quantities sold, and the price thereof, for any sales effected in his presence.

9. When the price-lists are prepared by an officer other than the Subdivisional Officer, they shall be submitted to the Subdivisional Officer or such other officer as the Collector may nominate for the purpose. Such officer shall scrutinise the lists ; he may call for explanations and cause errors to be corrected, and, having satisfied himself of the accuracy of the lists, he shall countersign them. Scrutiny and countersignature of price-lists prepared by subordinate officer.

Note.—The words beginning with “by an officer” and ending with “for the purpose” in the first sentence are new. The first part of the rule stood thus before :—“When the price-lists are prepared at the Sadar Sub-division by an officer other than a Covenanted Deputy Collector, or at other Sub-division by an officer subordinate to the Sub-divisional officer, or by a Sub-Registrar they shall be submitted to the Covenanted Deputy Collector or to a Deputy Collector specially nominated by the Collector for the purpose or to the Sub-divisional Officer as the case may be.”

10. The price-lists shall be published at the marts to which they respectively refer, at the Collectorate or subdivisional office, and at every police-station and munsifi in the local area. Publication of price-lists.

11. After the expiry of one month from the date of publication at the places prescribed in rule 10, the price-lists shall be submitted to the Board of Revenue with any objections made to them, and with the opinions of the officers who prepared and countersigned them, and of the Collector, on such objections. Submission of price-lists to Board.

CHAPTER III.

Landlords' Improvements.

12. *Section 80.*—Applications from landlords for the registration of improvements shall be made to the Collector of the district. Application for registration of improvement

to whom to be presented.

Verification by local inquiry.

Publication by local inquiry.

Record of local inquiry.

Orders by Collector on local inquiry.

Powers of officer recording evidence as to improvement.

If any such application be presented to any other Revenue Officer, he shall forward it for orders to the Collector.

13. As far as practicable, the application shall be in Form I, appended to these rules. The Collector shall either verify the application personally or shall depute a Revenue Officer, not below the rank of Sub-Deputy Collector, to make the verification. In all cases the verification shall be by local inquiry.

14. Before holding a local inquiry under rule 13, the Revenue Officer shall prepare a proclamation, giving general notice to the tenants of every village concerned of his proposed local inquiry and of the date thereof. He shall cause such proclamation to be published by beat of drum in every such village and he shall cause a copy of the proclamation, together with a copy of the landlord's application, to be fixed up, in the presence of not less than two persons, in some conspicuous place of every such village. The expense of such publication shall be borne by the applicant for registration.

15. The Revenue Officer who makes a local inquiry under rule 13 shall ascertain whether the work in question was carried out and, if so, at what time, at what cost, and at whose expense, in what proportion the expenses were borne by the landlord, whether the work is an improvement as defined in section 76 of the Act, and was lawfully made by the landlord, and, if the improvement comes under clause (e) of sub-section (2) whether enhanced rent is already being paid for the original improvement; and what tenants have been benefited thereby and to what extent. The Revenue Officer shall embody in a proceeding the result of his local inquiry. When an officer other than the Collector has made the local inquiry, he shall submit the proceeding to the Collector.

Note.—The words "in what proportion the expenses were borne by the landlord" are new. The necessity for the change lies in the amendments made in secs. 80 and 30 by the addition of the words "wholly or partly."

16. The Collector, after considering the proceeding of the local inquiry and after holding such further inquiry as he thinks necessary, shall pass an order directing or refusing the registration of the landlord's improvement; and if he directs registration, he shall record clearly whether it falls under clause (e) of section 76 (2) of the Act, and, if so, what enhancement of rent, if any, is being paid for the original improvement.

17. *Section 81 (1).*—Every Revenue Officer who records evidence under section 81 (1) of the Act shall exercise all the powers which are exercised by a Civil Court in the trial of suits, and shall be guided by the provisions of rules 5 and 8 of Order XVIII of the Code of Civil Procedure, 1908.

CHAPTER IV.

Record of Proprietor's Private Lands.

Application for record of proprietor's private land to whom to be made.

18. *Section 118.*—Applications under section 118 the Act shall be made to the Collector of the district. If any such applications be presented to any other Revenue Officer, he shall forward it for orders to the Collector.

Note.—The word "of" after the figures "118" and before the words "the Act" in this rule has been wrongly omitted from the finally published rules. It existed in the draft rule as well as in the old rule.

19. The application shall be signed by the party making it, shall contain the following particulars, so far as the applicant is able to furnish them :—

- (a) the name, tautzi number, and Government revenue of the estate;
- (b) the names of the registered proprietors, and the share held by each ;
- (c) the specification of each plot of land referred to in the application, showing the village in which it is situated and the area and boundaries of each plot, if known ;
- (d) the names of the tenants (if any) in occupation of each such plot ; and
- (e) the grounds of the application.

20. On receipt of the application, the Collector shall make such inquiry as he may think fit by examining the applicant or his agent, and may call for further particulars before ordering further proceedings. If the Collector directs that further proceedings be taken, he may transfer the application for inquiry and report to any Revenue Officer subordinate to him.

21. If the area of the lands has not been already ascertained by measurement made by competent agency under the authority of Government, or if for sufficient reason a further measurement is considered desirable, the Collector shall order that the lands be measured and shall estimate the cost of measurement, and shall require the applicant to deposit the amount either at once or in such instalments as he may deem fit.

22. If the Collector determines that the land or any portion thereof is proprietor's private land within the meaning of section 120 of the Act, he shall record a proceeding to that effect and shall attach thereto a map of the land as ascertained by measurement.

23. Rules 38 to 45 relating to Revenue Officers acting under Chapter X of the Act shall apply mutatis mutandis in the case of Revenue Officers acting under Chapter XI of the Act.

Note.—The numbers of the rules, viz. 38 to 45 are new. The old numbers were 41 to 48.

CHAPTER V.

Levy and transmission of landlords' fee and landlords' transfer fee.

Note.—The name of the Chapter is wholly new. Rules 24 to 29C provide for the elaborate machinery necessary for the collection of landlord's fees by the Collector the transmission of the same by him to the landlords for the process-fee for the service of notice and for the cost of transmission of the landlord's fees. These changes have been made necessary by the provisions of the new sections 26C, 26F, 26H, and 48H of the Act and are the most important changes brought about by the New Rules. Formerly the provisions of these rules were limited to notices under secs. 12, 13, 15 and 18 and came appropriately under the chapter on the Service of Notices.

24. In the rules under this chapter the expression transfer fee includes landlords' fee payable under sections 12, 13, 15, 18 (1) (a) of the Act, the landlords' transfer fee payable under sections 26C and 26F of the Act, and the fee payable to the landlord under sections 26H or 48H of the Act.

25. (1) Notices under sections 12, 13, 15, 18 (1) (a), 26C, 26F, 26H and 48H of the Act shall contain, so far as may be possible, the particulars given in form Nos. 2 to 7 appended to these rules.

Signature of,
and particulars
to be contained
in application.

Inquiry on
receipt of
application.

Measurement
of lands, where
necessary and
deposit of cost
thereof.

Record of
proceeding.

Rules 38 to 45
to apply to
officers acting
under Chapter
XI of the Act.

Meaning of
transfer fee
in this Chapter.

Notices for
fees and costs.

Unit for levy of process fee.

(2) For the service of these notices a process fee of Re. 1 shall be levied in the case of each holding or tenure; provided that where several holdings or tenures, included in one document of transfer, are held under the same landlord or same body of co-sharer landlords a single fee of Re. 1 shall be charged.

(3) The cost of transmission of transfer fee shall be levied at 10 per cent. of the fee subject to a minimum of 8 annas, fractions of an anna being treated as full anna.

(4) The transfer fee shall be paid in cash, and the process fee and the cost of transmission in court-fee stamp, to the registering officer or the Court as the case may be.

Note.—In sub-sec. (2) the words beginning with "holding or tenure; provided" and ending with "shall be charged." did not occur in the draft rules.

Notice on whom to be served and when to be served.

26. (1) Where there is a sole landlord, or when two or more persons are joint landlords and have a common agent appointed under section 99A or a common manager appointed under section 95 of the Act, the notice specified in rule 25 shall be served on such sole landlord or his agent, or such common agent or manager, as the case may be.

(2) Where there is more than one landlord, and no common agent or common manager has been appointed, the notice shall be served on each joint landlord named in it.

(3) The Collector or any other officer who signs the order for the notice to be served, shall satisfy himself that the transfer fee has been paid into the Treasury and that the process fee and the cost of transmission have been paid in court-fee stamp.

Manner of service.

27. (1) In each case under rule 25 notices, other than those to be served on the Collector shall be forwarded by post registered under Chapter VI of the Indian Post Office Act, 1898 (VI of 1898), and the fee required for a special acknowledgment shall be paid.

(2) If an acknowledgment for a notice sent by registered post cannot be obtained, the notice shall be served by affixing a copy in the office of the Collector for a period of one month, and such notice shall thereupon be deemed to have been duly served.

Note.—In sub-sec. (2) the words "one month" have been substituted for the words "two weeks" of the draft rules; and in sub-sec. (1) the words "notices other than those to be served on the Collector" have been substituted for the words "the notice" of the draft rules.

Transmission of transfer fee in cases under rule 26 (1).

28. (1) In the case mentioned in rule 26 (1), the transfer fee (except when it is wholly payable to Government or to a Trust estate under the management of the Board of Revenue, or to an estate under the Court of Wards in respect of which a personal ledger is maintained in the Treasury, or to a landlord in respect of whom a personal ledger account has been opened under rule 29B), shall, on receipt of acknowledgment of the notice sent under rule 27 (1), be transmitted by postal money order to the landlord or his agent or to the common agent or common manager as the case may be. In case of non-receipt of acknowledgment of the notice the money may be paid or sent by postal money order on the application in writing by the sole landlord or his agent.

(2) On the coupon and on the acknowledgment portion attached to the money order shall be noted the Collectors' case number and the date of the notice which gives particulars of the transfer fee to which the money order relates.

29. (1) In the case mentioned in rule 26 (2) the transfer fee can be paid only on the application and joint receipt of all the co-sharer landlords named in the notice, except when separate payment is made on an application under the first proviso to section 26C (3) of the Act, in accordance with the next following sub-rules.

Payment of transfer-fee in cases under rule 26 (2).

(2) Under the first proviso to clause (3) of the section 26C of the Act a co-sharer landlord named in the notices under rule 26 may apply to draw the proportionate share of the transfer fee due to him on account of a transfer by an occupancy riyat. Such application shall be verified in the same manner as a plaint under the Code of Civil Procedure, 1908, and shall contain the names and addresses of all the remaining co-sharer landlords including the persons named as landlords in the notice mentioned in rule 26, and the share of each. It shall also be accompanied by notices in Form No. 7, appended to these rules, to be served by the Collector on each such co-sharer or person.

(3) Unless such co-sharer landlord or person or his authorised agent, common agent or common manager be present before the Collector, every such notice shall be served by registered post with "acknowledgment due," under Chapter VI of the Indian Post Office Act, 1898, and a process fee of rupee one shall be paid in court-fee stamp by the applicant for every application filed before the Collector.

(4) If, after service of the notices mentioned in sub-rule (3), it appears to the Collector that there is no dispute in respect of the share claimed by the applicant the Collector shall pay him the portion of the transfer fee according to such share.

(5) If it appears to the Collector that there is a dispute or if the applicant be a person not named in the notices under rule 26 and the co-sharers are not agreeable to take payment on joint receipt, no payment shall be made unless the party has obtained a necessary decree or order from the Civil Court.

(6) An application under sub-rule (2) may include two or more items of transfer fee, provided the applicant claims the same share under the same interest and title, and no separate process fee will be charged when the other co-sharers are the same.

(7) A petition made by a co-sharer landlord whose name is mentioned in the notices under rule 26, in response to a notice issued under sub-rules (2) and (3) may be treated as an application under the first proviso to section 26C (3) of the Act, and unless such petition discloses any new co-sharer landlord or puts forth a different share or title for the petitioner, no further notice to the other co-sharer shall be necessary.

(8) Payment of transfer fee under this rule shall, unless it is taken direct from the Treasury, be made by postal money order to the landlord or his common agent or common manager, if any, except when it is payable to Government, or to a Trust estate under the management of the Board of Revenue or to an estate under the Court of Wards, in respect of which a personal ledger is maintained or to a landlord in respect of whom a personal ledger account has been opened under rule 29B.

Note.—In cl. (5) of this rule the words "decree or" after the word "necessary" in the last sentence did not occur in the draft rule but have been added since. In cl. (7) the expression "share of title" of the draft rule has been changed into "share or title."

Payment of
fees due to
Government or
Wards Estate, etc.

Personal ledger
of private
landlord.

29A. Transfer fees payable wholly to Government or to a Trust estate under the management of the Board of Revenue or to an estate under the Court of Wards in respect of which a personal ledger is maintained in the Treasury shall be credited direct in the treasury accounts or the personal ledger of the estate concerned as the case may be.

29B. (1) A personal ledger may be opened in respect of the transfer fees payable to the landlord of any estate or tenure or part thereof, if the sole landlord or all the co-sharer landlords of the estate, tenure or part thereof, as the case may be, apply to the Collector for such a ledger; provided that in the case of co-sharer landlords their shares in the estate, tenure or part thereof in respect of which the application is made are uniform. Provided also that if the landlord is a proprietor of a revenue paying estate or revenue free property his name is duly recorded in the Land Registration Registers of the Collectorate.

Illustration.—A, B and C are 3 co-sharer landlords owning a tenure which comprises 2 villages P. and Q. In village P, their shares are 4 annas, 4 annas and 8 annas and in village Q, 6 annas, 6 annas and nil respectively. There cannot be one personal ledger for them for both villages P and Q; but there may be one ledger for village P and another for village Q.

(2) Every such application shall be verified as a plaint under the Civil Procedure Code, 1908, and shall give a brief description of the estate or tenure or part thereof as the case may be, the names of the villages, the thanas in which they are situated, and where a record-of-rights has been prepared, the serial number of the khatian in which it is recorded. It shall also state the names and addresses of all the co-sharer landlords and their respective shares.

(3) Transfer fees in respect of which the description of the estate or tenure or part thereof as the case may be, and the names of the landlords mentioned in the notice under rule 26 agree with those stated in the application for personal ledger will be carried over to the ledger and intimation to that effect will be sent to the landlord with the memorandum sending the notice of transfer to him under rule 26.

(4) A landlord on whose application a personal ledger has been opened may apply to the Collector for the payment of the amount at his credit in the ledger, and the Collector shall, unless there be any dispute, pay the amount accordingly.

(5) Every application under sub-rule (4) shall state whether there has been any change in the landlords, and, if so, the particulars of such change, and it shall be verified in the same manner as a plaint under the Civil Procedure Code, 1908.

(6) An application under sub-rule (4) by a co-sharer landlord for separate payment for his share, will be treated as an application under the first proviso to section 26C (3) of the Act; but unless owing to the existence of any dispute or similar reasons, the Collector directs otherwise, the provisions of rule 29 shall not apply and it shall not be necessary to issue notices on the other co-sharer landlords.

(7) For the maintenance of a personal ledger under this rule an annual fee for each separate account on the following scale shall be levied:

When the revenue or rent of the entire estate or tenure does not exceed Rs. 100, Rs. 10.

In all other cases, Rs. 25

(8) A personal ledger opened under this rule shall be discontinued when the landlord or a co-sharer landlord intimates his unwillingness to continue it. The Collector may also refuse to renew a personal ledger if the annual fee prescribed in sub-rule (7) be not paid, or if it appears to him that owing to disputes and similar reasons it is not desirable to maintain such a ledger. The year for personal ledger is from 1st April to 31st March and fees are payable in advance.

Note.—In cl. (1) of this rule the word “sole” before the word “landlord” did not occur in the draft rule. Such is also the case with the words “as the case may be” after the words “part thereof” and the word “the proprietor” in the proviso.

In cl. (6) the figure and word “(3) and” which occurred in the draft rule have been omitted.

At the end of cl. (8) the words beginning with “the year for personal ledger” and ending with the words “payable in advance” have been added to the draft rules.

29C. (1) In cases where the transfer fee is remitted by postal money order but the payee has refused to accept payment thereof, and in all other cases except where the amount has been credited in the treasury accounts or in a personal ledger under rule 29A or 29B or has been otherwise paid, the amount or the balance of such amount, as the case may be, shall be kept in deposit for a period of 5 years from the date of the service of the notice mentioned in rule 26.

When transfer fee is to be kept in deposit and when forfeited.

(2) On the expiry of such period the Collector of the district or such other officer not below the rank of a Sub-Deputy Collector as may have been placed by the Collector in charge of cases relating to transfer fees, shall declare that the transfer fee remaining in deposit in the Collector’s office, regarding which no application for payment is pending shall be forfeited to Government.

CHAPTER VI.

Service of Notices.

Note.—This Chapter was formerly numbered Ch. V. But as a new chapter has been constituted with rr. 24 to 29C, the remaining rules of the Chapter have been retained under the old heading with a new number, viz. VI for the Chapter.

30. The draft of an agreement referred to in sub-section (2) of section 46 of the Act shall be filed in the Court having jurisdiction to entertain a suit for possession of the holding, and shall be served on the raiyat in the manner provided for the service of a summons on a defendant under the Code of Civil Procedure, 1908, on payment of the process fee provided in the rules by the High Court.

Filing and service of agreements under section 46 (2).

Note.—The words “draft” and “referred to” are new and have been introduced as the section itself has been amended by the insertion of the word “draft.” The word “possession” has been substituted for the words “arears of rent” before the words “of the holding” occurring in the draft rule.

CASES :—Where a landlord sent a draft of the proposed agreement duly stamped to the Court and the Court served on the tenant a copy identical with the draft but without a stamp on it, and it was said that it was not the original of the agreement that was tendered to the tenant but only a copy and hence there was no valid tender, it was held that there was a valid tender of the agreement as required under s. 46 of the B. T. Act. If the Defendant had executed the draft tendered to him, it would have been a sufficient compliance with the terms of the section.

It was held further that there is nothing in sec. 46 of the Bengal Tenancy Act that requires a notice to be served along with the copy of the agreement

though it may be inconvenient to do so. The statute does not make it obligatory. *The Port Canning and Land Improvement Co. Ltd. v. Noyan Paramanik*, 22 C.W.N. 558.

The procedure for service of draft is to be strictly followed—*Bharam Chand v. Kunak Sarkar*, 26 C.W.N. 359.

Service of notice
of receipt of
deposit in case
(d) of section 61.

31. In case * * * (d) of section 61, referred to in sub-section (ii) of section 63 of the Act, the notice of the receipt of the deposit shall be served by forwarding the notice by post in a letter registered under Chapter VI of the Indian Post Office Act, 1898 (VI of 1898), or, where the Court may deem it necessary, in the manner provided for the service of a summons on a defendant under the Code of Civil Procedure, 1908.

Note.—This was numbered 32 in the old rules no. 31 of which has been omitted. The references to cl. (a) and (b) have also been omitted from the present rule.

Publication
of general
notice under
section 72 (2).

32. The general notice of transfer referred to in sub-section (2) of section 72 of the Act may be published by the transferee by fixing up a written notice to the tenants in the village office of the landlord, or, in the presence of not less than two persons, in some conspicuous place on the lands, and by proclaiming to the tenants by beat of drum in every village to which the transfer extends, that the interest of the former landlord has passed to the transferee. The transferee may, if he thinks fit, apply for service of the notice to the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and the Court shall thereupon serve the notice, as hereinbefore provided on payment of the process fee provided in the rules made by the High Court.

Note.—This was formerly numbered 33.

Notice by
raiyyat of
intention to
surrender.

33. If the raiyyat elects to proceed under sub-section (2) of section 86 of the Act, he may personally serve a written notice of his intention to surrender on his landlord; but if he elects to proceed under sub-section (4) of the said section, the notice of the raiyyat's intention to surrender shall be served on the landlord in the manner provided for the service of a summons on a defendant under the Code of Civil Procedure, 1908, on payment of the process fee provided in the rules made by the High Court.

Note.—This was formerly numbered 36. Old rules 34 and 35 have been omitted as sec. 73 has been amended in such a way that no rules are required for notices under the section.

Notice by
tenant of
intention to
abandon.

34. A notice of the tenant's abandonment of his holding under sub-section (2) of section 87 of the Act shall be in Form No. 8 appended to these rules and shall be submitted in duplicate. One copy shall be published by beat of drum upon the holding alleged to be abandoned, and then kept in the record, and the other copy shall be affixed, in the presence of not less than two witnesses, to some dwelling house, or tree, or other conspicuous object upon the holding. The fee payable by the landlord shall be Re. 1.

Note.—This was formerly no. 37.

Notice to
tenant under
section 155.

35. Notice to the tenant under section 155 of the Act shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served in the manner provided for the service of a summons on a defendant under the Code of Civil Procedure, 1908, on payment of the fee provided in the rules made by the High Court.

Note.—This was formerly no. 38.

36. (1) When a tenancy is held under a single landlord or under two or more landlords having one common agent or common manager, such as is referred to in rule 26 (1), a copy of the instrument referred to in section 176 of the Act shall be served on such landlord or on such agent or manager as the case may be. Service of notice of incumbrances on landlord.

(2) When a tenancy is held under two or more landlords not having one common agent or common manager as aforesaid, a copy of the said instrument shall be served—

(a) if none of them have one common agent or common manager as aforesaid, then on each landlord, or

(b) if some of them have one common agent or common manager as aforesaid, then on such agent or manager and also on each of the landlords who have no such agent or manager.

(3) The said copy or copies shall be served in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure (Act V of 1908).

(4) The fee to be paid for such service shall be—

(i) in the cases referred to in sub-rule (1), one rupee; and

(ii) in the cases referred to in sub-rule (2), one rupee for the first copy of the instrument and four annas for each additional copy.

Note.—This was formerly no. 39.

37. The notice referred to in sub-section (6) of section 180A, shall be served in the manner provided for the service of a summons on defendant under the Code of Civil Procedure, 1908. Manner of service of notice under section 180A(6).

Note.—This rule is new.

CHAPTER VII.*

Part I.—Powers of officers making surveys and preparing records-of-rights.

38. When a Revenue Officer is appointed for the purpose of making surveys and preparing records-of-rights under Chapter X of the Act within any district, he shall be appointed either with or without the additional designation of "Settlement Officer" or "Assistant Settlement Officer." Every such officer is hereby vested with— Powers vested in Settlement and Assistant Settlement Officers.

(a) all the powers exercisable by a Civil Court in the matter of procuring the attendance of parties and witnesses and the production of documents and of examining the same ;

(b) powers to enter upon any land included within the area, in respect of which the order under section 101 of the Act has been made, and to survey, demarcate, and make a map of the same ;

(c) power to cut and thresh the crops on any land, in respect of which the order under the said section 101 has been made, and to weigh the produce with a view to estimating the capabilities of the soil ; and

* The former number of the chapter was VI.

- (d) power to take down evidence with his own hand in the English language, in proceedings held under Chapter X of the Act in which an appeal is allowed in accordance with the procedure laid down in the Code of Civil Procedure, 1908, for the trial of suits.

Note.—This rule was formerly numbered 41.

Further powers vested in Assistant Settlement Officer.
Ben. Act V of 1875.
Further powers vested in Settlement Officer.

39. A Revenue Officer appointed with the additional designation of "Assistant Settlement Officer" is also hereby vested with all the powers of an Assistant Superintendent of Survey and of a Deputy Collector under the Bengal Survey Act, 1875.

Note.—This rule was formerly numbered 42.

Further powers vested in Settlement and Assistant Settlement Officers.

40. A Revenue Officer appointed with the additional designation of "Settlement Officer" is also hereby vested with all the powers of Superintendent of Survey under the Bengal Survey Act, 1875.

Note.—This rule was formerly numbered 43.

41. A Revenue Officer appointed with the additional designation of "Settlement Officer" or "Assistant Settlement Officer" is also hereby vested with all the powers exercisable by a Civil Court in the trial of suits.

Note.—This rule was formerly numbered 44.

Powers of Settlement Officer to make over certain matters to Assistant Settlement Officer.

42. A Revenue Officer appointed with the additional designation of "Settlement Officer" may, by general or special order, make over for disposal to any Assistant Settlement Officer subordinate to him—

- (a) objections under section 103A ;
- (b) the settlement of fair rents, including the preparation of a table of rates ;
- (c) the preparation of a settlement rent-roll under Chapter X, Part II, of the Act ;
- (d) objections under section 104B (3) or section 104E ;
- (e) applications for settlement of fair rents under section 105 ; and
- (f) suits instituted for the trial of disputes under section 106.

* * * * *

Note.—This was formerly r. 45. Cl. (g) has been omitted as sec. 40 has been repealed.

Power of Settlement Officer to withdraw and transfer cases.

43. A Revenue Officer appointed under the designation of "Settlement Officer" may also withdraw from the file of any Assistant Settlement Officer subordinate to him any of the proceedings mentioned in rule 42, and may dispose of them himself, or transfer them for disposal to any other Assistant Settlement Officer subordinate to him. He may also transfer to a competent Civil Court for trial any particular case or class of cases under section 106 of the Act.

Note.—This rule was formerly numbered 46. The figures "42" give the present number of the rule formerly numbered 45.

Collector of district to discharge functions of Settlement Officer where no such officer appointed.

44. Where no special Settlement Officer has been appointed for any district, the Collector of that district * * * is hereby appointed to discharge all the functions of a Revenue Officer under Chapter X of the Act, and is vested with all the powers of a Settlement Officer under rules 38 to 43.

Note.—This rule was formerly numbered 47. The words "or, in the case of Howrah, the Covenanted Deputy Collector" have been omitted from

the old rules. The figures "38 to 43" give the present number of the rules formerly numbered 41 to 46.

45. In respect of all operations under Chapter X of the Act which have been placed under the administrative control of the Director of Land Records, that officer is hereby appointed to discharge all the functions of a Revenue Officer under the said Chapter and is vested with all the powers of a Settlement Officer under rules 38 to 43. In respect of such operations, he is further declared, under section 104B (4), to be the "confirming authority" for tables of rates and settlement rent-rolls which have been prepared by other Revenue Officers, and he is declared, under section 104G (1), to be the superior Revenue authority to whom appeals will lie from original orders on objections passed by other Revenue Officers under section 104B (3), or section 104E. In the case of tables of rates and settlement rent-rolls prepared by the Director of Land Records, the Board of Revenue will be the "confirming authority," and in the case of original orders on objections passed by the Director of Land Records, the Board of Revenue will be the appellate authority.

Powers vested in Director of Land Records.

Note.—This rule was formerly numbered 48.

The figures "38 to 43" are the present numbers of the rules formerly indicated as 41 to 46.

Part II.—Procedure in the preparation of a record-of-rights.

46. (1) Applications under section 101 (2) (a) and under section 103 of the Act shall be made to the Collector, who shall forward them with his recommendations through the Director of Land Records to the Commissioner. Applications under sections 101 (2) (a) and 103.

(2) Every application under section 101 (2) (a) shall specify—

- (a) whether applicant is a landlord or tenant ;
- (b) the local area, estate, tenure or part thereof for which the application is made ;
- (c) the interest of the applicant in the lands of the local area, estate, tenure or part thereof.

(3) Every application under section 103 shall specify—

- (a) the status of the applicant, viz., whether he is a proprietor or a tenure-holder or a raiyat ;
- (b) the particulars specified in section 102 of the Act, in respect of which the application is made ; and
- (c) the number of tenants occupying the estate or tenure or part thereof, in respect of which the application is made, the total rent payable by them at the time, and the estimated area covered by the application (so far as the applicant is able to give these particulars).

(4) If the application under section 101 (2) (a) or under section 103 of the Act, is made by a proprietor, it shall not be admitted unless the name of the applicant and the extent of his interest are registered under the Land Registration Act, 1876.

Ben Act VII of 1876.

(5) If the application under section 103 is made by a tenure-holder, it shall not be admitted unless the right of the tenure-holder and the extent of his interest is admitted by the superior landlord or is proved to the satisfaction of the Collector.

(6) The Commissioner shall forward an application under section 101 (2) (a) with his recommendation to the Local Government for orders.

(7) The Commissioner may allow an application under section 103, or, if he considers that it cannot be granted with advantage to the interests of all persons concerned, he may reject it, recording his reasons for doing so.

(8) When an application under section 101 (2) (a) or section 103 of the Act is allowed, the Collector shall call upon the applicant to deposit one rupee per acre of the estimated extent of the estate or tenure or part thereof in respect of which the application has been allowed.

(9) If the amount so deposited proves more than sufficient to cover the cost of the proceedings, the unexpended balance will be refunded on their termination. If the amount deposited proves insufficient to cover such cost, the applicant shall, when required by the Collector, deposit from time to time such further sums as the Collector may think necessary for the completion of the proceedings. If he shall fail to do so, the proceedings may be stopped and the order allowing the application cancelled.

Note.—This rule was formerly numbered as 49.

47. (1) When an order has been made under section 101 (1) or section 101 (2) of the Act directing that a survey shall be made and a record-of-rights prepared by a Revenue Officer in respect of the lands of any local area, estate or tenure or part thereof, the survey shall be made and the record-of-rights prepared in the manner described in the following rules (in this Part and in Part III of this Chapter) and by the following processes, namely :—

- (i) Traverse survey.
- (ii) Cadastral survey.
- (iii) Erection of boundary marks.
- (iv) Preliminary record-writing (or *khanapuri*).
- (v) Local explanation (or *bujharat*).
- (vi) Attestation.
- (vii) Publication of the draft record.
- (viii) Disposal of objections under section 103A.
- (ix) Preparation of the settlement rent-roll, in cases in which a settlement of revenue is being or is about to be made.
- (x) Preparation of the final record.
- (xi) Publication of the final record.
- (xii) Distribution of the final record and of printed maps ; and recovery of costs where ordered under section 114.
- (xiii) Settlement of fair rents under sections 105 and 105A.
- (xiv) Trial of suits under section 106 :

Provided that stage (v)—local explanation—may be omitted with the approval of the Director of Land Records.

(2) A Revenue Officer who has been appointed with the additional designation of "Settlement Officer" may, at any time before the publication of the final record, direct that any portion of the proceedings in respect of the lands of any local area, estate or tenure or part thereof, shall be cancelled and that the proceedings shall be carried out *de novo* from such stage as he may direct.

(3) When an order has been made under section 103 directing that all or any of the particulars specified in section 102 shall be ascertained and recorded with respect to any estate or tenure or part thereof, the Revenue Officer shall proceed in accordance with the following rules (in this Part and in Part III of this Chapter), so far as they may be applicable.

Note.—This rule was formerly numbered as 50.

48. *Traverse Survey.* The cadastral survey of the notified area shall be based upon a traverse survey, and such traverse shall ordinarily be carried out by theodolite observations. If possible, the traverse survey shall be connected with one or more points which have been fixed by previous surveys.

Note.—This rule was formerly numbered as 51.

49. *Cadastral Survey.*—(1) In the course of proceedings under section 101 of the Act, a large-scale map showing roads, rivers, railways and other physical features of the country, as well as homesteads and other fields, shall be prepared for each village contemplated by section 115A of the Act as the unit of survey and record.

(2) When the area contained within the external boundaries of the village maps of the previous survey contemplated by section 115A is unsuitable as the unit of survey and record, or, if there has been no such previous survey, the Settlement Officer shall, after ascertaining, as far as possible, the opinions of the landlords and tenants concerned, submit his proposals for the determination of the area to be adopted as the unit of record and survey to the Board of Revenue through the controlling officers to whom he is subordinate. That unit shall, if sanctioned by the Board of Revenue, be adopted in framing the record-of-rights, but shall not be deemed to constitute a village within the meaning of the Act until a notification has been issued under section 3 (19) (b). The Board of Revenue shall submit a copy of its order in each case to the Local Government for the issue of the notification.

Note.—This was rule 52 of the Old Rules. The reference to the definition of "village" has been brought up to date.

50. *Erection of Boundary Marks.*—Boundary marks of a permanent nature shall ordinarily be erected at every point where the boundaries of three villages meet, and may also be erected at any other points where this is necessary, in the opinion of the Revenue Officer, for the definition of any boundary.

Note.—This was rule 53 of the Old Rules.

51. *Preliminary Record-writing.*—At this and the two following stages the draft record shall be prepared. The draft record shall consist of statements of rights which are hereinafter styled the khatians. There shall ordinarily be a separate khatian for each person interested, or each group of persons jointly interested, in the land, whether as proprietor, tenure-holder, raiyat, under-raiyat or occupant, and each khatian shall show the rights and liabilities of each person or group of persons according to the particulars which have been specified in the notification under section 101. At this stage all such particulars shall find entry, with the exception that no entry shall be made as to the revenue, rent or cess, the class to which the tenant belongs, or the special conditions and incidents of the tenancy. At this stage there shall also be prepared a field-index or khasra arranged according to the serial numbers of the

fields in the village. This field-index shall not form part of the draft record. Disputes regarding the ownership of land, or the ownership of any interest in land, shall be decided by a Revenue Officer or a kanungo in a summary manner and on the basis of actual possession.

Note.—This was rule 54 of the Old Rules.

52. *Local Explanation.*—When the areas of the fields have been extracted and entered in the preliminary record, a copy of each khatian shall be made over by a Revenue Officer or a kanungo to the person or body of joint persons in whose names the khatian has been opened, or to their representatives. Each khatian shall then be examined on the ground, with reference to the village map, by a Revenue Officer or a kanungo, and shall be explained to the person or persons concerned, or their representatives, if present. The Revenue Officer or kanungo shall make such corrections as are necessary in the map, in the draft record, and in the copies of the *khatians* which have been distributed, if they can be produced for this purpose. At this stage entries of the rent which is payable according to the statement of the landlord and according to the statement of the tenant shall be made in the draft khatians of the tenants and in such copies as are produced; but the other particulars which were omitted at the stage of preliminary record-writing shall be deferred until the stage of attestation.

Note.—This was rule 55 of the Old Rules.

53. *Attestation.*—This stage of the operations shall be taken up after the landlords and tenants have been allowed a sufficient interval to study their copies of the khatians. The attestation of each village shall be taken up at a convenient place in or near the village. Before attestation begins, a proclamation shall be published in the village giving due notice to the landlords and tenants and calling on them to appear before the Revenue Officer on the date fixed, bringing with them their copies of the khatians. As each person appears before him the Revenue Officer shall examine his khatian, read out all the important entries, make corrections where required, and see that the whatian is complete in all particulars. Disputes regarding the ownership of land, or the ownership of any interest in land, shall be decided by the Revenue Officer in a summary manner and on the basis of actual possession. In the khatian of each proprietor or group of proprietors he shall enter with his own hand the revenue payable to Government. In the khatian of each tenant or group of tenants he shall enter with his own hand the class to which the tenant or group of tenants belongs, the special conditions and incidents (if any) of the tenancy and the rent lawfully payable or deliverable to each landlord or group of landlords. In the khatian of each cultivating raiyat as defined in the Cess Act, the Revenue Officer shall, and in the khatian of each tenure-holder as defined therein, the Revenue Officer shall, as far as possible, record the cess lawfully payable to each landlord or group of landlords. The Revenue Officer shall then sign and date the office copy of the *khatian*, and if the copy of the *khatian*, which was given to the person or persons concerned, is produced, the Revenue Officer shall see that it corresponds with the office copy as attested. When the Revenue Officer has completed the attestation of all the khatians of a village, he shall draw up a formal proceeding to this effect.

Note.—This was r. 56 of the old rules. The words "As each person appears before him, the Revenue Officer shall examine his khatian," "and see that the khatian is complete in all particulars. Disputes regarding the ownership of land," are new.

54. *Publication of the Draft Record.*—The Revenue Officer shall publish the draft record-of-rights by placing it for public inspection, free of charge, during a period of not less than one month, at such convenient place as he may determine. A proclamation shall previously be published in each village, informing the landlords and tenants of the place at which the draft record of that village will be open to public inspection, the period during which it will be open to such inspection, and the last date on which objections may be filed. Notwithstanding anything contained in the proclamation, the Revenue Officer may extend the period during which the draft record will be open to inspection and during which objections may be filed.

Note.—This was rule 57 under the Old Rules.

55. *Objections under section 103A.*—(1) Blank forms of objection shall be supplied free of charge and objections shall, as far as practicable, be made on such forms. Along with the original objection, the objector shall file a copy or copies for service on all other persons who, in the opinion of the Revenue Officer, are materially interested in the case. The Revenue Officer shall issue notices informing the objector and all other persons so interested of the date and place fixed for the hearing of the objection, and with each notice to a person other than the objector he shall forward a copy of the objection. Objections regarding the ownership of land, or the ownership of any interest in land, shall be decided by the Revenue Officer on the basis of actual possession. The record shall contain the names of the witnesses examined and an abstract of the reasons for the decision. When a Revenue Officer directs that a change shall be made in the rent recorded as payable by any tenant he shall direct that a corresponding change shall be made in the cess, if any recorded as payable by such tenant. Objections shall not be disposed of in the absence of any of the parties materially interested, or their representatives, unless the Revenue Officer be satisfied, for reasons to be recorded in writing, that the notice was duly served on the person concerned.

(2) Whenever the Revenue Officer has been unable, before the publication of the draft record, to enter the cess payable by all or any of the tenure-holders in any local area, and whenever, owing to a revaluation duly made after the publication of the draft record, there have been changes in the cess lawfully payable by all or any of the tenure-holders in such local area, the Collector may, at any time before the final publication of the record, make an objection to the omissions or entries in question, and the Revenue Officer shall thereupon proceed, notwithstanding anything contained in sub-rule (1) of this rule, to consider the objection, and, if necessary, to make in the draft record of such local area entries or revised entries of the cess which is then lawfully payable by each tenure-holder concerned :

Provided that no such entry or revised entry shall be made unless the tenure-holder has been previously informed of the proposed entry and has been given an opportunity of objecting thereto.

Note.—This was rule 58 under the Old Rules.

56. *Preparation of a settlement rent-roll.*—Where land revenue is being, or is about to be, settled, the Revenue Officer shall prepare a rent-roll for each village, in accordance with the following procedure:—

- (i) Before preparing the rent-roll, the Revenue Officer shall issue a proclamation informing the landlords and tenants of the time and place at which the preparation of the rent-roll will begin. If any tenant be absent, the Revenue Officer shall make no entry in the rent-roll which would have the effect of altering the rent of that tenant until a special notice has been duly served on that tenant.
- (ii) When the Revenue Officer is preparing the settlement rent-roll on the basis of a table of rates, he shall consult the landlord and tenants of the village regarding their own classification of the lands therein and regarding the relative capability of each class of land, according to that classification. When specifying in the table of rates the rate of rent which is fairly and equitably payable in respect of each class of land, the Revenue Officer shall specify and have regard to the rate of rent which is now being paid in respect of each class of land, and shall also have regard to the statements of the landlords and tenants as to the classification and relative capability of lands. Before settling any rent upon the application of the table of rates, the Revenue Officer shall consider the circumstances of the tenant and shall compare the total rent which he is now paying with the rent which he would pay according to the table of rates. He shall also consider whether the land held by the tenant is good or bad land of its class.
- (iii) When determining the final entries to be made in the rent-roll, the Revenue Officer shall read out, or cause to be read out in his presence, the principal entries relating to the holding and rent of each tenant whose rent is to be settled, and shall enter in the rent-roll with his own hand the fair rent settled for each such tenant.
- (iv) The Revenue Officer shall enter in the settlement rent-roll the cess which is payable by each tenant to his landlord after the determination of the fair rent.
- (v) The publication of the draft table of rates, if any, and of the draft settlement rent-roll shall be carried out in the manner and for the period prescribed in the case of the publication of the draft record-of-rights.
- (vi) Objections under section 104B (3) or under section 104E of the Act shall ordinarily be disposed of by the Revenue Officer, in or near the village in which the land is situated. The Revenue Officer shall record his reasons for each order on an objection. Appeals will lie against these orders to the superior Revenue authority mentioned in rule 45.

Note.—This was rule 50 under the Old Rules.

45 is the new number of the rule which was formerly numbered 48.

57. *Preparation of the Final Record.*—When all objections under section 103A of the Act have been disposed of, and when the settlement rent-roll, if any, has been prepared, sanctioned and incorporated with the record, and when the draft record has been corrected in accordance with the original and appellate orders on all objections, the Revenue Officer shall proceed to frame the final record. The final record shall be prepared in conformity with the draft record corrected as above, and shall consist of a series of khatians prepared on forms which are generally similar to the forms used for the khatians of the draft record. The khasra shall not form part of the final record. The final record shall be printed or prepared in manuscript, according as the Local Government may, by general or special order, determine.

Note.—This was rule 60 under the Old Rules.

58. *Publication of the Final Record.*—The Revenue Officer shall publish the final record-of-rights by placing it for public inspection free of charge, during a period of not less than one month, at such convenient place as he may determine. A proclamation shall previously be published in each village, informing the landlords and tenants of the place at which the final record of that village will be open to public inspection and the period during which it will be open to such inspection.

Note.—This was rule 61 under the Old Rules.

59. *Distribution of printed maps and of copies of the Final Record.*—The maps which have been prepared under rule 49 (1) may be printed under the authority of the Local Government, and may be distributed to public officers, to landlords and tenants and to others, in such manner as the Local Government may, from time to time, by general or special order, direct. Copies of the final record-of-rights, or of portions thereof, shall be printed or prepared in manuscript and shall, after certification under section 76 of the Indian Evidence Act, be distributed to public officers, to landlords and tenants and to others, in such manner as the Local Government may, from time to time, by general or special order, direct. The printed maps and the copies of the record or of portions thereof, which are distributed under this rule to persons other than public officers shall be distributed free or on payment, according as, in the case of each local area, the Local Government may direct. When payment is required the sums so received shall ordinarily be adjusted against the expenses incurred on account of survey and settlement, should the account of those expenses still be open.

Note.—This was r. 62 of the Old Rules. The figures 49(1) give the number of the new rule which under the Old Rules was r. 52 (1).

Part III.—Procedure After Final Publication.

SETTLEMENT OF FAIR RENTS UNDER SECTIONS 105 AND 105A.

60 (1) When the landlord or tenant applies for the settlement of a fair rent, he shall be considered as plaintiff and the opposite party as defendant. The proceedings shall be dealt with as suits and, subject to the directions contained in this rule, the Revenue Officer shall adopt, as far as it is applicable, the procedure laid down in the Code of Civil Procedure, 1908, for the trial of suits.

(2) When the estate or tenure is managed by the Court of Wards or by a manager appointed by the District Judge under section 95 of the Act and a settlement of revenue is not being or is not about to be made, the procedure laid down in this rule for recording and settling rents shall be followed, the manager of the estate or the tenure being regarded as the landlord.

(c) When a landlord or tenant applies for the settlement of fair rent notice shall be served on every person interested in the application, together with a copy of the application, or extract therefrom, or summary thereof, so far as the application concerns such persons.

(4) With the consent of the Revenue Officer, any number of tenants occupying land under the same landlord in the same village may make a joint application for the settlement of rent, or may be joined as defendants in the same proceedings on a similar application by the landlord :

Provided that, if at any time it appears to the Revenue Officer that the question between any two of the parties, of whom one is so joined with others, cannot conveniently be so jointly tried, he may order a separate trial to be held of that question, or he may pass such order, in accordance with the Code of Civil Procedure, 1908, for the joint or separate disposal of the application, as he may think fit.

(5) On the date fixed for the settlement of fair rents, or any subsequent date to which the proceedings may be adjourned, the Revenue Officer shall read aloud, or cause to be read aloud in his presence, the name of each tenant whose rent has to be settled, the area of his tenancy, and the existing rent, and shall then proceed to settle a fair rent under the provisions of section 105 of the Act.

(6) When a landlord or tenant does not attend, after due service of notice has been proved, the procedure may be *ex parte*.

(7) Where a landlord or a tenant appears and the fair rent is not settled under sub-section (5) or sub-section (6) of section 105 of the Act, that is, by the acceptance by the parties of a rent proposed by the Revenue Officer, or by compromise, the Revenue Officer shall record evidence in the manner prescribed in clause (j) of section 118 of the Act for the trial of rent suits, and shall settle a fair and equitable rent according to law :

Provided that in important cases the Revenue Officer may, in his discretion, record evidence at length.

(8) When a fair rent has been settled under these rules, it shall be entered in the khatian as the rent payable in respect of the tenancy from the date prescribed by section 110 of the Act.

(9) It shall not be necessary for a Revenue Officer to draw up a separate decree with regard to the fair rent settled ; but the entry made in his decision or schedule attached thereto with regard to the fair rent settled shall be held to be a decree.

(10) A proceeding under section 105A of the Act shall be considered as part of the proceeding under section 105 in which the issue arose, and the record of a proceeding under section 105A shall be considered as part of the record of the proceeding under section 105. In trying and deciding issues under section 105A, the Revenue Officer shall record evidence in the manner prescribed in sub-rule (7) of this rule.

Note.—This was r. 63 under the Old Rules.

61. *Suits under section 106.*—Proceedings under section 106 of the Act shall be dealt with in all respects as suits between the parties.

Note.—This was r. 64 under the Old Rules.

62. Notwithstanding anything contained in these rules, the procedure prescribed in clause (b) of section 148 of the Bengal Tenancy Act, 1885, as being applicable to suits for the recovery of rent, shall be applicable *mutatis mutandis* to proceedings, under sections 105, 105A or 106 of that Act.

Note.—This was r. 64A of the Old Rules, having been inserted in 1918 as r. 64A.

63. The rules issued by the Local Government under Order XXVI, rule 9, of the Civil Procedure Code, 1908, shall not apply to proceedings in the Court of a Revenue Officer under sections 105, 105A or 106 of the Act.

Note.—This was r. 65 of the Old Rules.

64. Applications under section 115B of the Act for the correction of *bona fide* mistakes must be dealt with by a Revenue Officer specially empowered by the Local Government. If they are presented to a Revenue Officer not specially empowered under that section, he shall receive them and forward them with his report to the Revenue Officer so empowered. The court-fee payable on every such application is twelve annas.

Note.—This was r. 66 of the Old Rules.

Twelve annas.—The words "twelve annas" were substituted for "eight annas" by notification No. 628 L. R. of 28th Oct. 1922. In the draft rules the Court-fee was again sought to be made "eight annas."

Rules under Order XXVI, rule 9, of the Civil Procedure Code, not to apply to proceedings under section, 105, 105A or 106 of the Bengal Tenancy Act. Application under section 115B by whom to be dealt with.

CHAPTER VIII.

General Scale of Fees.

Note.—This chapter was numbered VII under the Old Rules.

65. *Service of notices.*—(1) For the service of every notice under this Act, not being a notice issued by any Revenue or Civil Court [fees for serving which are regulated by the Court-fees Act, 1870 (VII of 1870)], and not being provided for any other rule made under this Act, a process fee of 12 annas shall be levied, if the notice be directed to one or more persons residing in the same village.

(2) Where such notices are directed to several persons resident in different villages, a fee of 12 annas shall be levied for service in each village.

(3) In addition to the above fee, the actual charge which must be incurred if it is necessary to travel by railway or boat, or to cross ferries, shall be levied from and paid by the person at whose instance the process is issued before issue of the process. If a peon carries more than one process involving charges for railway fare, boat hire, etc., the sum leviable shall be charged in equal share upon all the processes so carried. The rate at which such boat hire is to be charged shall be the same as those fixed for criminal processes under rule VII of the Rules prescribed by the High Court under clause (ii) of section 20 of Act VII of 1870, and shall be sufficient only to cover, on the whole, the actual cost of hiring boats, or of such boat establishment as it may be necessary to maintain for the purpose of serving processes of this nature.

Fees for service of notice.

(4) If a peon is detained at the place of service for more than 24 hours at the request of the person at whose instance the process was issued, or of his agent, such person or agent shall then and there pay demurrage at the rate of 5 annas a day and obtain a receipt from the peon. Unless this demurrage is paid, the peon shall decline to wait. No demurrage shall be charged if the delay was not due to the person requiring the process or to his agent.

Note.—The word “by” after the words “provided for” has been wrongly omitted both in the draft and in the finally published rules. The old rules had the word “by.”

Note.—This was r. 67 of the Old Rules.

66. For the cost of transmission of money deposited in cases (a) and (b) of section 61 referred to in section 63 (1) of the Act, the fee payable for sending the amount by postal money order shall be levied.

Note.—This is new. Its introduction has been rendered necessary by the present substituted section 63 (i) laying down the procedure for payment to the landlord of rent deposited in Court under sec. 61 (a) and (b).

Fees for deposits
of rent.

67. *Deposits of rent.*—For deposits of rent under section 61 (1) of the Act fees in cases (c) and (d) of that section shall be levied according to the following scale:—

On any sum not exceeding Rs. 5	As. 1
On any sum exceeding Rs. 5 but not exceeding Rs. 10	„ 2
On any sum exceeding Rs. 10 but not exceeding Rs. 25	„ 4

On any sum exceeding Rs. 25, four annas for each complete sum of Rs. 25 and four annas for the remainder; provided that, if the remainder does not exceed Rs. 10, the charge for it shall be only two annas; provided also that in no case shall the fee exceed the sum of Rs. 5.

Note.—This was r. 68 of the Old Rules. Both under the old rules and in the draft rule, the reference the section was 61 (2).

* * * *

Note.—The last rule of this chapter provided for distraint and has been omitted owing to the repeal of the provisions for distraint.

CHAPTER IX.

Miscellaneous.

Note.—This Chapter is new and most the rules in this Chapter are new.

Manner of
publication of
notification
under section
1 (3).

68. The notification referred to in sub-section (3) of section 1 (regarding the exclusion of any area or part thereof from the operation of the Act), shall be published in the “Calcutta Gazette,” at the Collectorate and sub-divisional office and at every munsifi within the jurisdiction of which the area concerned or any part thereof is situated, and it shall also be published by beat of drum in the area concerned (to be excluded by such notification).

Note.—This rule is necessitated by the required manner of publication of notification laid down in the proviso to section 1 (3).

Form to be
used for
money order.

69. When rent is sent by postal money-order, the money-order shall be prepared in the form provided for rent money-orders and shall be made payable at the landlord's village office or if any other place has been appointed by the landlord for the payment of rent at such place, and the money-order shall be addressed to the landlord

or his agent according as rent has been previously paid to the landlord himself or his agent.

70. The register of common agents referred to in clause (a) of sub-section (2) of section 59A, shall be in form No. 9 appended to these rules, and shall contain the particulars mentioned in that form. Form of Register of common agents.

71. The special summons referred to in section 148 (k), sub-clause (i), shall be in form No. 10 appended to these rules. Form of special summons.

Note.—The draft rules gave the reference as sec. 148 (f) and this has been corrected.

72. The post-card referred to in sub-clause (iii) of section 148 (k) shall be in form No. 11 appended to these rules. Form of post-card notice under section 148 (k) (iii).

Note.—Here also the draft rule gave the reference as sec. 148 (f) and this has now been corrected.

73. The summons referred to in sub-section (2) of section 148A, shall be in form No. 12 appended to these rules. Form of summons of co-sharer landlord under section 148A (2).

Note.—This rule is new as the provision for a special summons is new in the substituted section.

74. The concise statement of the sale proclamation referred to in clause (c) of sub-section (3) of section 163 of the Act, shall be in form No. 13 appended to the rules. Form of concise statement under section 163 (3) (c).

Note.—The reference to the section was given as sub-sec. (2) of sec. 163 both in the draft rule and the marginal note to it. This has now been corrected.

75. The requisition under sub-section (14) of section 180A, to be made by a landlord for the recovery of unpaid premium or instalment thereof, shall be in form No. 14 appended to these rules. Form of requisition for certificate under section 180A (2).

Note.—This form was already in use, having been inserted by Notification No. 13079 L. R., dated the 7th December, 1926, published in the *Cal. Gaz.*, Pt. I. p. 1931 of 16-12-1926.

76. The rules referred to in sub-section (2) of section 190 of the Act, made by authorities other than the Local Government or the High Court, shall be published in the same manner as the rules made by the Local Government. Method of publication of rules under authorities other than by Government or High Court.

77. Every requisition from the Civil Court to the Collector for certified copies of, or extracts from, the record-of-rights shall, so far as may be possible contain the particulars specified in form No. 15 appended to these rules. The copy or extract shall be certified to be correct by such officer as may be appointed by the Collector for the purpose. Particulars for requisition by court for copies of record-of-rights.

Note.—This was r. 40 of the Old Rules. The figures 15 give the new number of the form which was No. 9 under the Old Rules.

Application.

(Section 80 of Act VIII of 1885.)

THE COLLECTOR OF.....

The application of.....
son of....., resident of.....
for registration of an improvement under section 80 of the Bengal
Tenancy Act, 1885 (VIII of 1885).

A. B.

[illegible]

Form No. 2.

Notice of Transfer.

(See rule 25.)

(Sections 12 and 18, Bengal Tenancy Act.)

To be used for permanent tenures, rent-free tenures and mukarari holdings of raiyats.

To

.....

landlords, common agent or common manager.

Take notice that the transfer of the tenure (or mukarari holding) specified in the schedule on the reverse has been registered at the..... Sub-Registry office on..... to....., and the landlord's (transfer) fee of Rs..... is in deposit in this Collectorate by Chalan No..... dated.....

In the case of a sole landlord, or where there is a common agent or common manager for all the co-sharer landlords, the amount will, on receipt of acknowledgment of this notice, be sent by postal money order to such sole landlord, common agent or common manager as the case may be, unless otherwise desired.

In the case of co-sharer landlords without common agent or common manager, payment can be made only on joint application and receipt of all the co-sharers.

Dated, the.....

Collector of.....

Names and Addresses of all Persons stated by the Tenant to be the Landlords :—

(Care should be taken that the names of all co-sharer landlords receiving rent are stated.)

Item number in the schedule.	Names of landlords.	Postal address	Name and postal address of common agent or common manager, if any.

Postage.

To

.....

landlord, common agent or common manager,

Village.....

Post Office.....

District.....

From

.....Collectorate.

Form No. 3.

Notice of Transfer.

(See rule 25.)

(Sections 26C and 48H, Bengal Tenancy Act.)

To be used for transfers by occupancy raiyats and leases to under-raiyats for a period exceeding 12 years.

To

.....

landlord, common agent or common manager.

Take notice that the transfer of the occupancy holding (or under-raiyati lease) as specified in the schedule on the reverse has been registered at the..... Sub-Registry Office on..... 19....., and the transfer fee of Rs..... is in deposit in this Collectorate by Chalan No..... dated.....

In the case of a sole landlord or where there is a common agent or common manager for all the co-sharer landlords, the amount will, on receipt of acknowledgment of this notice, be sent by postal money order to the landlord, common agent or manager as the case may be, unless otherwise desired.

In the case of co-sharer landlords without common agent or common manager, payment will be made on the joint receipt of all the co-sharers. A co-sharer landlord may however have separate payment of his share of the fee if he proceeds under the first proviso to section 26C (3) of the Act.

Collector of.....

Dated.....

Names and Addresses of all Persons stated by the Tenant to be the Landlords :—

(Care should be taken that the names of all co-sharer landlords receiving rent are stated.)

Item number in the schedule.	Names of landlords.	Postal address.	Name and postal address of common agent or common manager, if any.

Schedule.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Name, father's name and residence of transferor	Name, father's name and residence of transferee.	Nature of transfer, viz. sale, gift, exchange, bequest or lease.	Item number in the document.	Name of estate and truzi-No.	Village and thana in which the land is situated.	Khatian number of the landlord of the tenancy transferred.	Khatian number of the tenancy transferred.	Annual rent of the tenancy, if not rent-free.	Area of the entire tenancy.	Plot No. or subordinate Khatian No. transferred.	Area transferred.	Share, where an undivided share of a holding is transferred.	Proportionate rent in case of transfer of a portion or share of a holding.	Consideration money or value as set forth in the document.	Amount paid as landlord's fee.	Remarks.

NOTE.—Columns 7, 8 and 11. Where no record-of-rights has been prepared, a brief description of the property should be given in these columns.
Column 3.—In case of bequest enter number and year of the laws under Act V of 1881.

Postage.

To

.....

landlord, common agent or common manager

Village.....

Post Office.....

District.....

From

.....Collectorate.

(See rule 25.)

[Sections 12, 18 (1), 26E and 26H, Bengal Tenancy Act.]

To

landlord, common agent or common manager.

Take notice that the sale of (or decree or order absolute for the foreclosure of mortgage thereon) the tenancy specified in the schedule on the reverse has been confirmed in the Court of.....at.....on.....19....., and the landlord's (transfer) fee of Rs..... is in deposit in this Collectorate by Chalan No..... dated.....

In the case of a sole landlord or where there is a common agent or common manager for all the co-sharer landlords, the amount will on receipt of acknowledgment of this notice be sent by postal money order to the landlord, common agent or manager as the case may be.

In the case of co-sharer landlords without common agent or common manager, payment will be made on the joint application and receipt of all the co-sharer landlords. A co-sharer landlord may, in case of transfer of occupancy holding, have separate payment of his share of the fee if he proceeds under the first proviso to section 26C (2) of the Act.

Dated.....

Collector of.....

Names and Addresses of all Persons stated to be the Landlords :—

(Care should be taken that the names of all co-sharer landlords receiving rent are stated.)

Item number in the schedule.	Names of landlords.	Postal address.	Name and postal address of common agent or common manager, if any.

Schedule.

No. and year of execution case	Date of confirmation of sale or the decree absolute for foreclosure.	Name, father's name and residence of judgment debtor.	Name, father's name and residence of decree-holder.	Name, father's name and residence of purchaser.	Item number of sale or foreclosure.	Name of estate and Tazri No.	Village and Thana in which the land is situated.	Khatian No. of the land transferred.	Khatian No. of the tenancy transferred.	Nature of the tenancy, viz., tenure, rent, mukarari or occupancy holding.	Extent of interest sold or foreclosed.	Amount of transfer fee and.	Remarks.
1	2	3	4	5	6	7	8	9	10	11	12	13	14

NOTE.—Column 6. When several tenures or holdings are included in the same sale decree or foreclosure, a separate item should be given for each unless they are held under the same landlord.
 Columns 9 and 10. When there is no record of rights, a general description of the property should be given.

Postage.

To

.....
landlord, common agent or common manager.

Village.....

Post Office.....

District.....

From

.....Collectorate.

Form No. 5.

(See rule 25.)

In the Court of....., at.....

Re Execution Case No.....of.....

Memo. No....., dated.....

To

THE COLLECTOR OF.....

*Enter sec.
12, 13, 26E or
26H, as the
case may be

The enclosed notices under section*.....of the Bengal Tenancy Act, VIII of 1885, are forwarded herewith for service on the landlord, and other necessary action, with the intimation that the landlord's (transfer) fee of Rs..... has been deposited in the treasury atwith Chalan No....., dated....., and Rs.....as process fee and Rs.....as cost of transmission have been paid in court-fee stamp.

Sd.

Judge

Schedule of papers enclosed.

Treasury chalan	sheets.
Court-fee stamps affixed	sheets.
Main notice	sheets.
Notice to be served	sheets.

*Form No. 6.***Notice of Succession.**

(See rule 25.)

(Sections 13 and 18, Bengal Tenancy Act.)

To.....

landlord, common agent or common manager.

Take notice that I.....of village..... district....., have succeeded to the tenure (or raiyati holding at fixed rate) specified in the schedule on the reverse, and that the landlord's fee of Rs.....has been deposited in the.....Collectorate by Chalan No....., dated.....

In case of a sole landlord or where there is a common agent or common manager for all the co-sharer landlords, the amount will, on receipt of acknowledgment of this notice, be sent to the landlord, common agent or manager as the case may be by postal money order, unless otherwise desired.

In the case of co-sharer landlords without common agent or common manager, payment can be made only on joint application and receipt from all the co-sharers.

Names and postal addresses of the landlords. (Care should be taken that the names of all co-sharer landlords receiving rent are stated.)	Names and postal addresses of the common agent or common manager, if known.

Dated.....Sd., *tenant*.*Ordered* that this notice be served on the abovementioned landlords.*Dated*.....*Collector of*.....

Schedule.

Name and tanzil number of estates.	Description of tenure or raiyati holding at fixed rate succeeded to, with village, pargana thana and district.	Khatian number, if there is a record-of- rights.	Annual rent of the tenure or raiyati holding at fixed rate.	Name, father's name and residence of the late tenure- holder or raiyat at fixed rate.	Nature of successor's title to succeed.	Amount of landlord's fee.	Remarks.
1	2	3	4	5	6	7	8

Postage.

To

.....

landlord, common agent or common manager

Village.....

Post Office.....

District.....

From

.....Collectorate

Postage.

Form No. 7.

Notice of Application.

(Section 26C (3), first proviso of the Bengal Tenancy Act, VIII of 1885.)

To

.....

Village.....

Post Office.....

District.....

From

.....Collectorate.

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Schedule.

[illegible]

NOTES.—Columns 4 and 5. When there is no record of rights a general description of the property should be given.

Schedule.

[illegible]

Form No. 10.

Special Summons for disposal of rent suit.

(See rule 71.)

[Clause (k) (i) of section 148 of the Bengal Tenancy Act, 1885
(VIII of 1885).]

District.....

In the Court of the.....at

No.....of 192

To

Whereas.....
has instituted a suit against you for rent, cesses and interest (or
damages) amounting to Rs..... due for the tenancy mentioned
below, you are hereby summoned to appear in this Court in person
or by a pleader duly instructed, and able to answer all material
questions relating to the suit, or who shall be accompanied by some
person able to answer all such questions, on.....day of.....
192, at.....o'clock in the.....noon, to answer the claim; and as the
day fixed for your appearance is appointed for the final disposal of
the suit, you must be prepared to produce on that day all the witnesses
upon whose evidence and all the documents upon which you intend to
rely in support of your defence.

Name,
description
and place of
residence.

Take notice that, in default of your appearance on the day before
mentioned, the plaintiff will be entitled to obtain a decree for any sum
not exceeding the sum of Rs..... with interest at 6 per cent. from
.....(date of institution) till date of payment and the sum of
Rs..... for costs with interest thereon.

Given under my hand and the seal of the Court this.....day
of.....192

Judge.

NOTICE.—(1) Should you apprehend your witnesses will not attend of their own accord
you can have a summons from this Court to compel the attendance of any witness, and the
production of any document that you have a right to call upon the witness to produce, on apply-
ing to the Court and on depositing the necessary expenses.

(2) If you admit the claim, you should pay into Court Rs.including
costs of the suit to avoid execution of the decree which may be against your person or property,
or both.

1. Date of filing of process.
2. Date of making over process to Nazir.
3. Date on which made over to process-server.
4. Date of return by process-server after service.
5. Date of return by Nazir to Court.

Form No. 11.

Notice.

(See rule 72.)

[Sub-clause (iii) of clause (k) of Section 148 of the Bengal Tenancy Act, 1885
(VIII of 1885.)]

In the Court of.....District.....

Rent Suit No.

19

Plaintiff,

versus

Defendant.

To

Take notice that the plaintiff in the above suit obtained a decree on.....
under sub-clause (ii) of section 148 (*fr*)* for the sum of Rs..... as rent, cesses
and interest (or damages) from Kist..... of.....with interest at six per
cent. per annum from (date of.....institution)..... up to the date of
payment and the sum of Rs.....for costs with interest at.....thereon.

Judge.

*This should be section 148(k). In the draft rules and forms, the other reference to the section in this form as well the reference to the section in Form no. 10 were similarly wrong as in rules 71 and 72 themselves. But while all of them have been corrected, this one has escaped detection. The mistake crept in owing to the fact that the clause was at first numbered as 148 (2) and then re-numbered under section 129 of the Bengal Act IV of 1928 as Sec. 148 (R)

*Form No. 12.***Summons on co-sharer landlord party defendant in suit for arrears of rent.**

(See rule 73.)

[Section 143A (2) of the Bengal Tenancy Act, 1885 (VIII of 1885).]

District.....

In the Court of the.....at.....

Rent suit No.....192 .

Plaintiff,

versus

Defendant.

To

Name,
description
and place of
residence.

Whereas.....
has instituted a suit for arrears of rent, cesses and interest (or damages) amounting to Rs.....due for the tenancy mentioned below, and has prayed for relief under section 148A, you are hereby summoned to appear in this Court in person or by a pleader duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied, by some person able to answer all such questions, on the.....day of.....192 . at..... o'clock in the.....noon, to answer the claim, and to make an application under sub-section (2) of section 148A by adding to the above claim any arrears of rent, cesses and interest, (or damages) due to you in respect of the tenancy up to the date of the institution of the suit.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence, and that you shall not be entitled to obtain a decree for any rent due to you in respect of the tenancy for the period in suit or for any period previous thereto except as co-plaintiff in this suit.

Given under my hand* the seal of the Court, the.....day of...192

Judge.

NOTICE.—Should you apprehend your witnesses will not attend of their own accord you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court and on depositing the necessary expenses.

* The word "and" is wanting here.

RULES UNDER B. T. ACT

Date of filing of process.

Date of making over process to Nazir.

Date on which made over to process-server.

Date of return by process-server after service.

Date of return by Nazir to Court.

Form No. 13.

**Concise statement of order of attachment and proclamation of sale
of tenure or holding.**

(See rule 74.)

[Section 163 of the Bengal Tenancy Act, 1885 (VIII of 1885).]

(To be issued by registered post to the judgment-debtor at the time of issue of
the order of attachment and sale proclamation.)

In the Court of the.....District.....

Execution proceedings No.....19

of Decree-holder.

of Judgment-debtor.

To

.....Judgment-debtor.

The following particulars of the order of attachment and sale of the tenure
or holding issued under section 163 of the Bengal Tenancy Act, VIII of 1885
are sent for your information :—

1. Date of the issue of the order of attachment and sale proclamation.....
2. Whether sale proclamation issued under clause (a) or clause (b) of
section 163 (2).....
3. No. of suit in which execution proceedings taken, the Court by which
decided, and names of the parties.....
4. Decretal amount with costs and interest up to date of sale for which
property ordered to be attached and sold.....
5. Date and hour fixed for sale.....
6. Description of property ordered to be attached and sold.....

Judge.

Form No. 14.

Form of requisition for a certificate.

(See rule 75.)

[Section 180A (14) of the Bengal Tenancy Act.]

To

The Collector of the district of.....

I request you to recover the undermentioned sum of Rs.
(rupees.....) which I am satisfied after enquiry is
due to me from (Name).....as premium in accordance
with an order under section 180A (8) of the Bengal Tenancy Act, a certified copy
of which is enclosed herewith.

(Verification.)

Landlord.

- (1) Name of certificate-debtor.....
- (2) Address of certificate-debtor.....
- (3) Amount of the demand for which this requisition is made.....
- (4) Description of the demand, i.e., whether the entire premium or only an instalment, and the date when the payment was due.....
- (5) Number and year of the case in which the demand was ordered and the date of the order.....

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